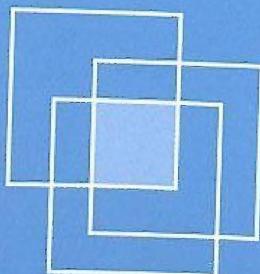


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# ABOLITION OF BONDED LABOUR: MANUAL FOR PRESIDING OFFICERS



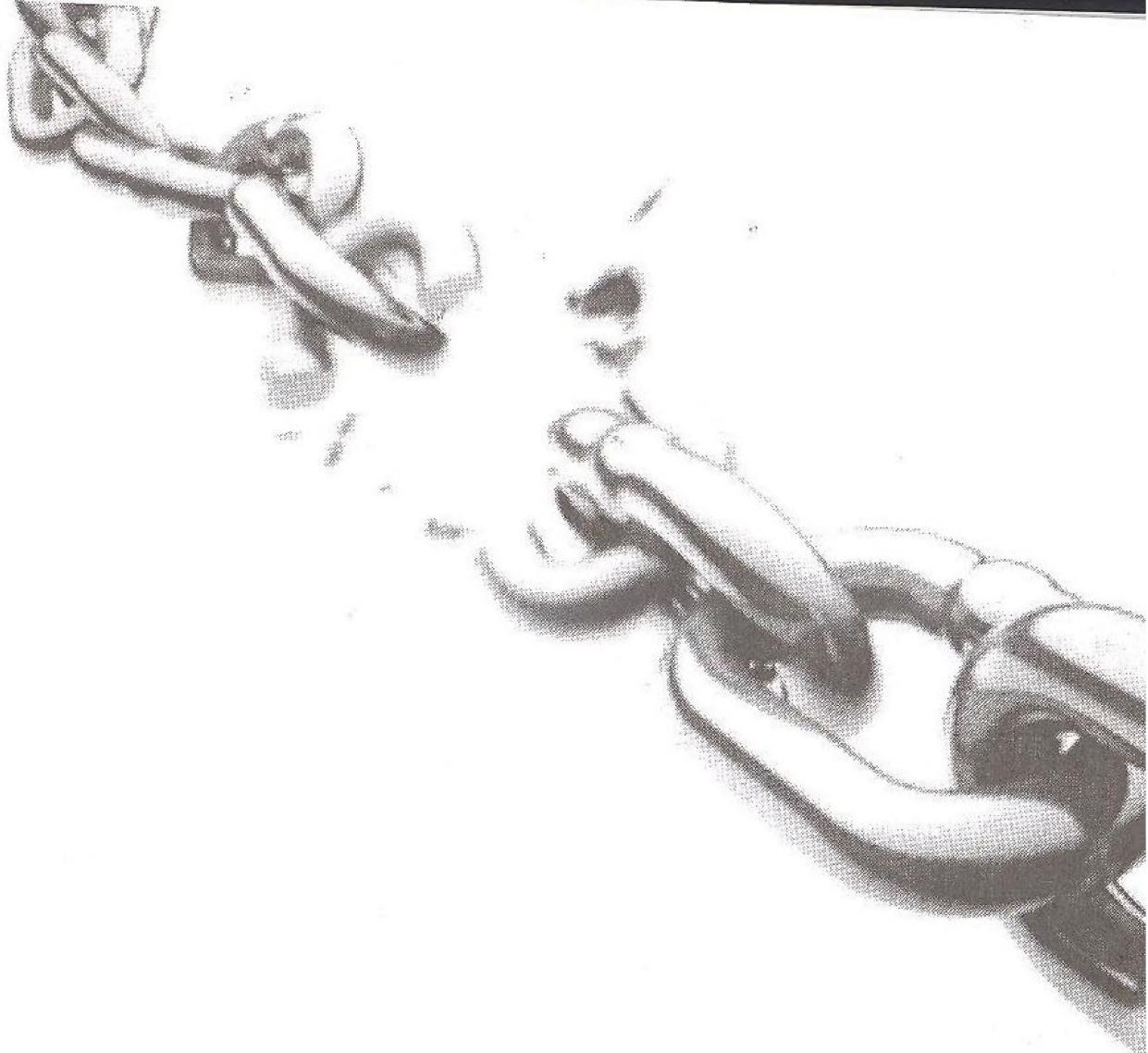
Promoting the Elimination of  
Bonded Labour in Pakistan (PEBLIP)

ILO Office for Pakistan

## Disclaimer

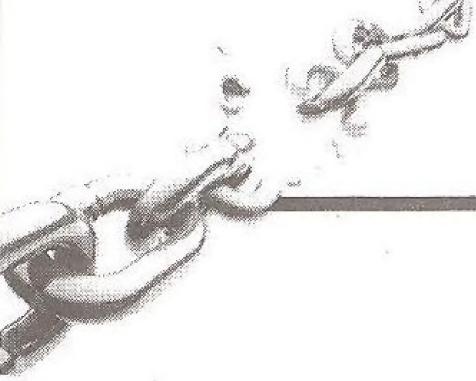
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ABOLITION OF BONDED LABOUR:  
**MANUAL FOR  
PRESIDING OFFICERS**

Barrister Zaffarullah Khan  
2009

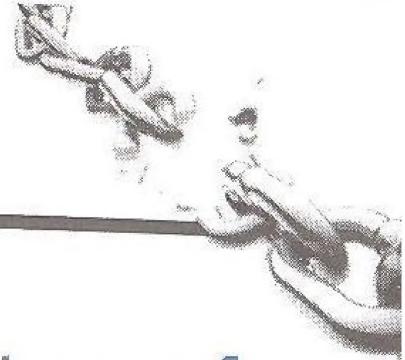


# Preface

International Labour Organization (ILO) is mandated, among others, with the responsibility to fight against the menace of Bonded Labour across the globe and play its beneficial role towards the relief and rehabilitation of bonded labour wherever it is found.

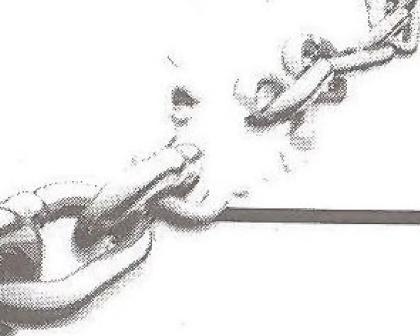
The Bonded Labour system is somewhat rooted in certain sectors of Pakistani economy. Pakistan being a responsible member of United Nations has signed and ratified various international Conventions that aim at the elimination of the bonded labour system from the country. Similarly, at the domestic level, it has taken various legislative steps to curb and eliminate this menace from its society e.g. the Bonded Labour System (Abolition) Act 1992 and Bonded Labour System (Abolition) Rules 1995.

ILO has launched many programmes in Pakistan to help eradicate the curse of the bonded labour from Pakistani society and to sensitize the masses and the other stakeholder about the matter. ILO is implementing a project “Promoting the Elimination of Bonded Labour in Pakistan (PEBLIP)” and these manuals on bonded labour are produced under this project. It is hoped that these manuals will help various stakeholders in the elimination of the bonded labour system.



# Manual for the Abolition of Bonded Labour

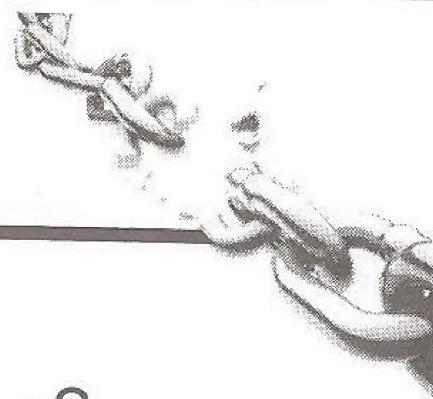
- 1) Different religions, philosophies, ideologies and beliefs are universally committed to upholding the values of human dignity and human freedom. These are maintained at all cost and form the foundation of any belief system. They condemn in the strongest possible terms all forms of slavery, forced labour and bonded labour.
- 2) Post second world war, a plethora of human rights movements have come to the fore and a number of international Declarations and Conventions have come into force. No state, can therefore, exercise the sovereign right to treat its citizens as it wishes. Domestic laws therefore need to be consistent with internationally agreed standards as an obligation to international laws.
- 3) There is an intrinsic link between peace, security, human development and human rights. We cannot ensure social human development without peace and security and we cannot ensure peace and security without human development. In order to ensure peace



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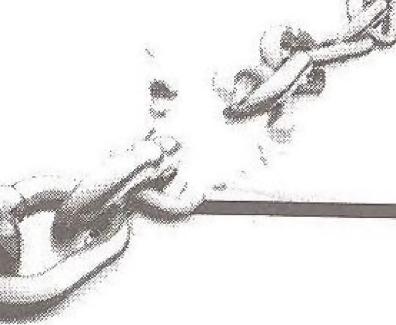
and security human rights including decent labour standards need to be upheld.

- 4) The menace of bonded labour is one of the most serious violations of human rights as it affects all aspects of life including civil liberty, human dignity and economic rights.
- 5) Bonded labour or forced labour is universally equated with slavery and practices similar to slavery. The International Labour Organization (ILO) therefore prioritized this issue and was one of the first organizations to address it in the wake of the First World War.



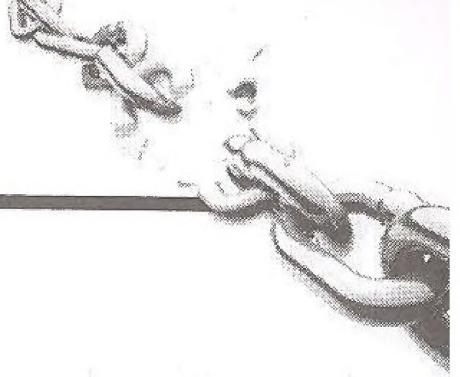
## 2. What is Bonded Labour?

- 1) The system of bonded labour is a relic of the anachronistic feudal system, which still functions in Pakistan. It is deeply rooted in the social customs and traditions that treat it as a normal human practice. The system of bonded labour is also closely associated to the broader socioeconomic problems of surplus labour, unemployment/under-employment, inequity in resource allocation, inequitable distribution of land and assets, low wages, distress migration and lack of social and economic justice.
- 2) The International Labour Organization's Report on 'Stopping Forced Labour (2001)' defines the term, Bonded Labourer, as a worker who renders services under the condition of bondage arising from economic considerations, notably indebtedness through a loan or an advance. Where the 'debt' is the root cause of the problem of bondage, the implication is that the worker (or dependents or heirs or family members) is tied to a particular creditor for a specified or unspecified period of time until the loan is repaid.
- 3) Bonded labour - or debt bondage is considered to be a form of slavery but it is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer or a slave when their labour is demanded as a means of repayment for a loan. The



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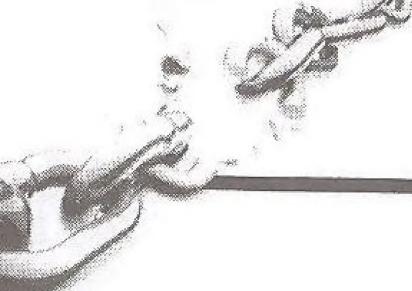
person is then trapped into working tirelessly for minimal or no pay, often for seven days a week. The value of their work is invariably greater than the original sum of money borrowed. The inhuman and indecent conditions of the work causes immeasurable indignity and distress on the labourer and/or his/her family or dependents.



### 3. Situational analysis

- 1) In the Asia-Pacific region, the majority of forced labourers reside in South Asia. However, there is no consensus on the scale of bonded labour within these countries especially in Pakistan. In Pakistan, there is no official number of bonded labourers. The most recent survey of bonded labourers carried out for the ILO by the Pakistan Institute of Labour Education and Research in October 2000 - indicates that up to 6.8 million persons were living in conditions of bondage. A more conservative estimate - counting only those who said they were indebted to their landlord in Sindh - would be 1.8 million persons. The majority of these are "untouchable" Hindus. The same study estimates that across the 4,000 brick kilns in Pakistan, up to 700,000 persons are in debt bondage, over half of them women and children. These figures do not include workers in carpet weaving factories, where it is known that there is a high incidence of debt bondage and child labour<sup>1</sup>.
- 2) The number estimate of bonded labour also depends on the 'definition' of bonded labour that varies from one surveyor to another.. However, even without going into the authenticity of numbers, it is common knowledge that a large number of the people in certain sectors are trapped in one form or the other of bonded labour.

<sup>1</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Enslavement of Dalit And Indigenous Communities In India, Nepal And Pakistan Through Debt Bondage, February 2001



## 4. Sectors of Bonded Labour

Bonded Labour is mostly prevalent, with varying degrees, in one form or the other, in the following sectors of economic activity in Pakistan:

- 1) Brick kilns
- 2) Mining developments
- 3) Domestic workers
- 4) Begging
- 5) Agriculture
- 6) Bangles
- 7) Construction
- 8) Carpet Weaving



## 5. Consequences of Bonded Labour

1. The menace of bonded labour is a source of misery and suffering for millions of hard working men, women and children who are forced to work in deplorable working conditions due to their economic and social status.
2. It is the right of these individuals to be protected by law enforcement agencies. The existence of bonded labour is a poor reflection of the social and legal system of any country.
3. Pakistan is a Muslim state and a sizable portion of bonded labour belongs to minorities: for example Hindus and Christians as they are often sectors that are discriminated against and therefore treated with disrespect.
4. The issue of bonded labour can trigger international sanctions including economic ones as in addition to the sanctioning powers of the Security Council, under the UN Charter, the ILO labour regime empowers international agencies to impose sanctions on a country which does not comply with the fundamental international labour standards and abolition of bonded labour.
5. The issue of bonded labour is affecting aid policies of bilateral and multilateral institutions. Major donors



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highlight thehi9s issue and demand that Pakistan's laws abide by the international sanctions against such practices.

6. After the formation of WTO and the abolition of tariffs, the issues of violation of human rights, including bonded labour has attained greater importance and has had an influence on major policy dynamics in trade relations. The European General System of Preference (GSP) is one such example. By adhering to international labour standards, Pakistan will not only ensure the sanctity of its citizens but also lead to more productive economic relations with global partners and will be able to benefit from various international agreements including trade concessions..
7. Western buyers are conscious of and aware of products which use bonded labour. They sk their suppliers to provide them products which are made in an environment which is free from bonded labour.
8. Keeping in view the economic consequences of the point made above, this makes the Pakistani market vulnerable and negatively impacts Pakistani exports.
9. The rradication of bonded labour is a mandatory obligation on the state under Article 11 of the Constitution. A violation of this obligation is a violation of the Constitution.
10. In international comity of nations, we are obliged to conduct our domestic affairs in a universally



recognized manner. The international legal regime may be of UN or the ILO, regarding the eradication of the bonded labour, mandates us to ameliorate the conditions of bonded labour. And our failure or negligence in not complying with international labour standards or violating the said international regime will be violation of international law.



## 6. International Conventions

### 1) Universal Declaration of Human Rights

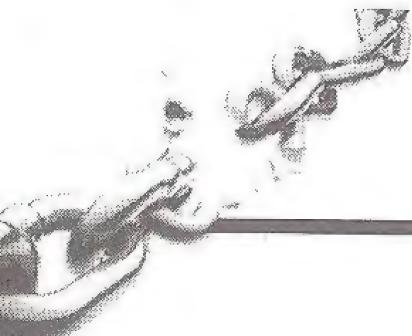
- a) The Universal Human Rights system consists of several national and regional instruments. The more significant among them are the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Social and Political Rights (ICCPR, 1976) and the International Covenant on Economic Social and Cultural Rights (ICESCR, 1976).
- b) In 1948, the UN Commission adopted a draft Declaration that in turn was adopted by the General Assembly that year as the Universal Declaration of Human Rights, with 48 states voting in favour of and 8 abstaining. (It should be noted that at that time the total UN membership stood as 56 states). This Declaration became the springboard for the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1976. These Covenants with the UDHR form the international bill of rights.
- c) The Preamble of the Declaration highlights the following principles, which permeate the rights and duties, enshrined in the Declaration.
  - i. All the members of the human family have an inherent dignity and equal and inalienable rights.



- ii. The recognition of the inherent dignity and of equal and inalienable rights is the foundation for freedom, justice and peace in the world.
- iii. A disregard and contempt for human rights results in barbarous acts, which outrage the conscience of mankind.
- iv. Human rights should be protected by the rule of law.

d). The following articles of the Charter are, directly or indirectly, relevant to the issue of bonded labour.

1. Right to life, liberty and security (Article .3)
2. Freedom from slavery and servitude (Article. 4)
3. Freedom from torture, or degrading treatment (Article. 5)
4. Right to recognition as a person before the law (Article. 6)
5. Right to equality before the law and to equal protection of the law (Article 7)
6. Right to an effective remedy, if rights are violated (Article .8)
7. Freedom from arbitrary arrest, detention or exile (Article. 9)
8. Right to respect for privacy, family, home or correspondence and honour (Article. 12)



9. Right of freedom of movement and residence (Article. 13)
10. Right to social security (Article. 22)
11. Right to work and free choice of employment (Article. 23)
12. Right to rest and leisure (Article. 24)
13. Right to a standard of living , adequate for health and well being (Article .25)
14. Right to education (Article. 26)
15. Right to participate in the cultural life (Article .27)  
**(Annex A)**

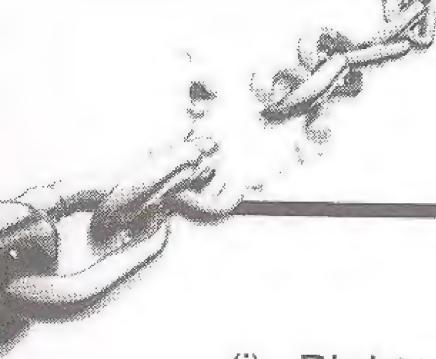
## 2). UN Supplementary Convention on the Abolition of Salary

- 1) The UN Supplementary Convention on the Abolition of Salary (1956) defines bonded labour as “the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.
- 2) The Convention aims at a total abolition of bonded labour.



### 3) International Covenant on Civil and Political Rights (ICCPR), 1976.

- a) The International Covenant on Civil and Political Rights, along with International Covenant on Economic, Social and Cultural Rights constitutes the bedrock of modern International human rights. It was approved by the General Assembly on 9 December 1966 and came into force in 1976.
- b) Pakistan has signed this Covenant on 17-4-2008.
- c) The Preamble enunciates the following, among others, principles, which permeate the Covenant:
  - i. There is an inherent dignity of human persons.
  - ii. Freedom from fear and want is the ideal for which human beings should strive.
  - iii. The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his/her economic, social and cultural rights, as well as his/her civil and political rights.
  - iv. Every individual has duties to other individuals and to the community to which he/she belongs.
- d). The following articles of the Covenant are, directly or indirectly, relevant to the issue of bonded labour:-

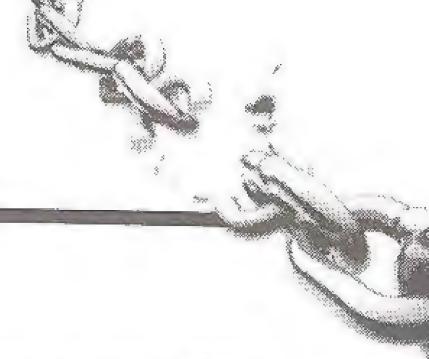


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- (i) Right to life (Article 6)
- (ii) Freedom from torture and degradation (Article 7)
- (iii) Freedom from slavery and servitude (Article 8)
- (iv) Right to liberty and security of person (Article 9)
- (v) No imprisonment in cases of contractual obligations.(Article 11)
- (vi) Freedom of movement and residence.(Article 12)
- (vii)Equality before law and other procedural safeguards.(Article 14)
- (viii)Right to recognition before law.(Article 16)
- (ix) Freedom from interference with his privacy, home etc.(Article 17)
- (x) Protection of family rights.(Article 23)
- (xi) Rights of children (Article 24)
- (xii)Equality before law.(Article 26)
- (xiii)Rights of minorities.(Article 27) **(Annex-B)**

#### 4). International Covenant on Economic, Social and Cultural Rights

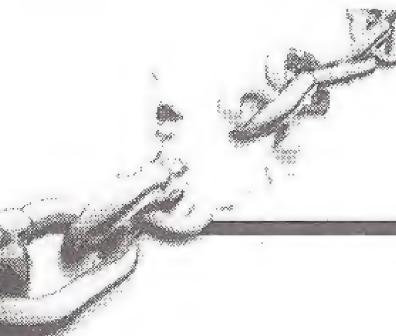
- a) The International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly on 16 December 1966 and came into force in 1976.



- b) Pakistan has signed this Covenant on 3-11-2004 and has ratified it on 17-4-2008.
- c) The Covenant is essentially a 'promotional convention' stipulating objectives more than standards and requiring implementation over time rather than all at once.
- d) The following articles of the Covenant are, directly or indirectly, relevant to the issue of bonded labour
  1. Right to work and training (Article 6)
  2. Right to just and favourable conditions of work (Article 7)
  3. Right to form and join trade unions ( Article 8)
  4. Right to social security ( Article 9)
  5. Protection of and assistance to family (Article 10)
  6. Right to an adequate standard of living ( Article 11)
  7. Right to physical and mental health (Article 12)  
**(Annex C)**

## 5). Convention on the Rights of the Child, 1989

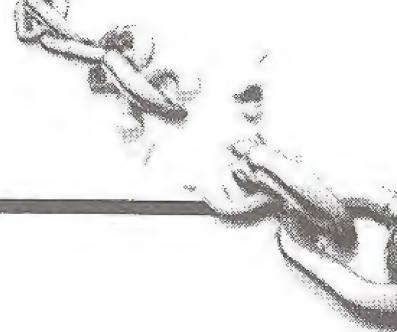
- a) The Convention on the Rights of the Child, 1989 (CRC) is the main Convention of the rights of the child. Pakistan has ratified it in 1990.
- b) The following articles of the CRC directly deals with



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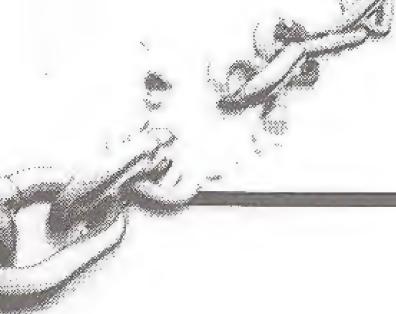
those children involved in bonded labour:

- i. Article 32: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or... be harmful to the child's health or physical, mental, spiritual, moral or social development." States are directed to implement and ensure these protections.
- ii. Article 35: "States Parties shall take all appropriate measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form." A significant portion of the bonded child laborers of India are trafficked from one state to another and some are sold outright.
- iii. Article 36: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare" (**Annex-D**).



## 7. ILO Obligations

1. Modern international human right laws originated from the International Labour Organization (ILO) which was established by the Treaty of Versailles in 1919 to abolish the 'injustice, hardship and privation' which workers suffered and to guarantee 'fair and humane conditions of labour'.
2. The ILO has been a pioneer in the international protection of economic and social rights and has an impressive record of achievement in the field. The ILO adopted international minimum standards in relation to freedom of association and the right to organize trade unions, forced labour, minimum working age, hours of work, weekly rest, sickness protection, accident, invalidity and old-age insurance, and freedom from discrimination in employment.
3. There are two principal aspects of this work: standard-setting and measures of implementation. As regards standard setting, the ILO employs two principal methods:
  - the conclusion of international conventions; and
  - the adoption of recommendations.
4. The conventions, of course, are binding only on the states, which ratify them. Recommendations on the other hand do not create legal obligations for the states. Their purpose is rather to set standards. Since



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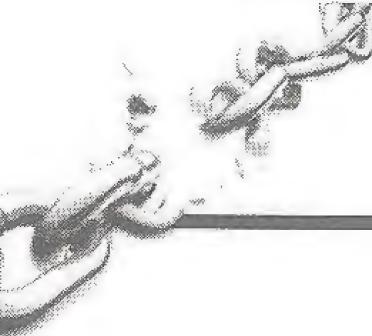
its creation the ILO has adopted more than 170 international conventions. The number of recommendations is even larger than the number of conventions.

5. The following conventions directly relate to the issue of the bonded labour:
  - a). Convention C-29: Forced Labour Convention, 1930
    1. Convention C-29 is called Forced Labour Convention, 1930 and it is one of the major two conventions of the ILO that are directly related to the issue of bonded labour. The convention is entitled as "Forced Labour Convention 1930".
    2. It was passed by the General Conference of ILO in 1930. Pakistan has ratified this convention on 23:12:1957. In other words, this convention is legally binding on Pakistan and the Government of Pakistan is under international law obligation to bring its laws in conformity with the convention.
    3. Under this convention each Member of the International Labour Organization which ratifies this Convention undertakes the commitment to suppress the use of forced or compulsory labour in all forms within the shortest possible period.
    4. However, with a view to this complete



suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only as an exceptional measure that too subject to the conditions and guarantees provided in the Convention. (Article 1).

5. For the purpose of this Convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
6. Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include:-
  - a) any work or service exacted in virtue of compulsory military service laws for work of a purely; military character;
  - b) any work or service which forms part of the normal civic obligations of the citizens of a fully self- governing country;
  - c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision of a public authority and that the said person is not hired to or placed at the disposal of



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private individuals, companies, or associations;

- d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect, or vegetable pests, and in general any circumstance that would endanger the existence or well-being of the whole or part of the population;
- e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community. (Article 2) (**Annex E**)

b). Convention 105: Abolition of Forced Labour Convention 1957

1. The second major ILO Convention is the 105 Convention entitled 'Abolition of Forced Labour Convention 1957'. It was passed by the General Conference of ILO in 1957.
2. Pakistan has ratified this convention on 15:02:1960. In other words, this convention is legally binding on the Pakistan and Government of Pakistan is under international law obligation to bring its laws in conformity with the convention.



3. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:
  - a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
  - b) as a method of mobilizing and using labour for purposes of economic development;
  - c) as a means of labour discipline;
  - d) as a punishment for having participated in strikes;
  - e) as a means of racial, social, national or religious discrimination. (Article 1)
4. Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour. (Article 2) **(Annex F)**.

## 8. National Legal Regime

### a) Constitution of Pakistan

- 1) Chapter 1 of the Constitution of Pakistan deals with 'Fundamental Rights' and Chapter 2 has details on the 'Principles of Policy'. The rights enumerated in Chapter 1 are fundamental rights and are justiciable and can be enforced by any individual through courts whereas human rights enshrined in the Principles of Policy are not justiciable, so cannot be enforced through courts. Furthermore, any law, custom or agreement etc which is in violation of these fundamental rights has been declared null and void by Article 8 of the Constitution.
- 2) Article 11 of our Constitution prohibits all forms of forced labour. The article further declares that
  - a) slavery is non-existent and forbidden;
  - b) no law shall facilitate slavery in any form;
  - c) all forms of forced labour and trafficking in human being is prohibited;
  - d) No child under the age of 14 years can be engaged in any factory or mines or other hazardous employment;
  - e) Though article 11 allows certain forms of compulsory service for public purpose; it puts a ban on any service of a cruel nature which is



incompatible with human rights.

- 3). This norm declared by our Constitution about abolition of forced labour and slavery is consistent with all the norms of international human rights law. **(Annex G)**

## (b) Pakistan Penal Code 1860

1. Pakistan Penal Code 1860 (PPC) is the major penal law of the land. Many provisions of the PPC are relevant with various aspects of bonded labour. The criminal manifestation of bonded labour includes wrongful restrain, wrongful confinement, extortion of property, use of criminal force, criminal assault, kidnapping, abduction, hurt and even murder. Adequate provisions have been made for various aspects of criminal behavior in this general law.
2. The law makers were even cognizant of the issue of unlawful compulsory labour which is directly or indirectly related to the bonded labour. Section 374 of PPC deals with the unlawful compulsory labour. Unlawful compulsory labour has been defined as an offence when anybody unlawfully compels any other person to engage in labour against the will of that person and it has been criminalized with the penalty of imprisonment for a term which may extend to 5 years or with fine or with both. Initially the imprisonment was 1 one year however, in 1969 it was raised to five years; this is the first ever law inherited by Pakistan on the issue of compulsory bonded labour containing a

criminal penalty. ( Annex F)

### c). Darshan Masih Case

1. The menace of bonded labour has been brought to the lime light by judicial activism starting from 1988 to date. On 30th July 1988 a telegram was sent from Lahore to the Chief Justice of Pakistan, Mr. Justice Afzal Zullah. It read:

*'We plead for protection and bread for our family. We are brick kiln bonded labour. We have been set at liberty through the court and now three amongst us have been abducted by our owners. Our children and women are living in danger. We have filed complaint. No action taken. We are hiding like animals without protection or food. We are afraid and hungry. Please help us. We can be contacted through counsel. Our state can be inspected. We want to live like human beings. The law gives no protection to us'.*

2. The then Chief Justice of Pakistan, Mr. Justice Afzal Zullah treated it as a public interest litigation and took cognizance under constitutional jurisdiction under Article 184(3) of our Constitution that gives the court jurisdiction to take cognizance when there is an issue of enforcement of fundamental rights and of public importance.
3. The honorable court formed many committees consisting of all the relevant stakeholders including laborers, employers, trade unions and lawyers etc to



study the bonded labour issue and submit a report to the apex court. The committees submitted various reports to the honorable court and the apex court while treating the matter falling under Articles 9, 11, 14, 18 and 25 of the Constitution made those recommendations as a part of its order. The case is reported as PLD 1990 SC 513. The directions of the Supreme Court of Pakistan are as under:

- 1) The Peshgi system was to be discontinued forthwith except that up to one week's estimated wages may be paid by the owner to the worker as advance against proper receipt;
- 2) The payment shall be made to the worker concerned or the head of the household, direct in cash. The receipt shall be issued in duplicate one to be retained by each;
- 3) The institution of "Jamadar" is finished and he is excluded for all times. No payment for others shall be made to him nor shall it be acknowledged in any forum, as due in any form, if claimed to have been made through him;
- 4) The institution of "Jamadarni" is likewise finished altogether;
- 5) Every case registered anywhere in Punjab by the Police, which deals with, directly or indirectly, any of the constituents of the practice of bonded labour in the brick-kiln industry, shall be reported to the

Advocate General, with a copy of the FIR within 24 hours. The Advocate General shall submit a photocopy of the FIR and other documents, if any with his own comments, within further 24 hours, to the Supreme Court;

- 6) Past Peshgis, for the time being, shall not be treated as void and unrecoverable. However, they shall not at all be recovered in any form through police or through the employment of the so-called "labour" under the Peshgi recovery arrangements or through any coercive measure; and further orders shall be made by the court in this behalf including the request for utilization of the Zakat fund for the discharge of so-called bad debts of Peshgi. The question whether recoveries would-be abolished altogether and whether legislation shall be made on the lines as done in India, is deferred for the time being, for six months. This aspect shall be reviewed in the light of the working of these arrangements for which all concerned have agreed, if approved by court.
- 7) Filing of Habeas corpus petitions shall not be stopped. However, all concerned have agreed that if the arrangements agreed upon are put into practice the need for filing false/genuine habeas corpus petitions would not arise. The Advocate General shall, however, appear personally in every habeas corpus petition whether in the High Court or in the Supreme Court;



- 8) The owners shall not directly ask or pressurize any laborer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and or children, might in proper cases, be proceeded against. The payment made to the head of the household including that of his family members', male, female, shall be in the name of the head of the household. Separate recipients may not be mentioned in formal registers and receipts.
- 9) No deduction whatsoever shall be made from wages; nor shall the number of bricks, if they are more than 1000 be counted as 1000 in any garb. The damage/loss to the bricks suffered on account of rain shall be wholly borne by the owner. Similarly, no other deduction including that of past Peshgi loans including those for marriage or for medicine treatment etc shall be made from the wages.
- 10) Payment made by the owner to the laborer in addition to the wages whether in the form of formal loan or otherwise for marriages and other ceremonies or for medicines or other purposes shall not be recoverable from the labour. If genuinely paid/spent they shall be treated as for good-will or donation.

## Past Peshgis

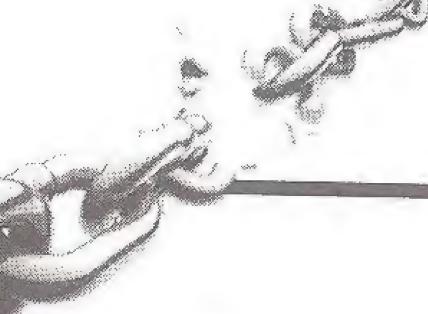
There was some confusion regarding the status of peshgi, so certain stakeholders applied to the court for the clarification of its early order. So the court passed this explanatory order:

- 1) It is to be made clear that past unreturned Peshgis given to the laborers by brick kiln industry owners are still outstanding against the laborers. The laborers are legally bound to return all such outstanding Peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorized to recover the same by legal means i.e. through court decrees-cases to be decided expeditiously with effective notices to the laborers; but, they are not authorized to use unlawful means for the recoveries of such Peshgis, such as coercive methods or use of police.
- 2) Past Special Emergency Loans. A maximum of Rs.5000/- household granted to the laborers in the past, in the form of formal loans or grants for: marriages, religious festivals, medicine/treatment and death ceremonies, by the owners (to the laborers) shall not be recoverable from them and shall be treated as donation. This concession shall only be available to those laborers who return and resume their work voluntarily.
- 3) Future Pesghis. The Peshgis system in future is to be discontinued. Although in proper cases if a valid



agreement on this point is reached between a laborer and a brick-kiln owner, the latter shall give the former an advance loan, which shall not be in any case be more than seven days wages, against a proper receipt in duplicate, a copy of which shall be retained by both the parties. The payments/adjustments of which shall be made to the owners in easy installments as agreed by the parties. However, if a loan in this behalf is not settled/adjusted no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would be at the risk of the owner.

- 4) Return work. A notice/direction is to be issued to all the laborers to come for work and report to their respective Bhatta owners; who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case of a laborer does not want to come back or having returned, wants to leave his work in the Bhatta of an existing owner, or to get a job elsewhere, or in the Bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned District Judge/Civil Judge 1st Class gets a certificate for the purpose.
- 5) Payment of wages. Payment of wages shall have to be made to the laborers on a daily / weekly / fortnightly / monthly basis as agreed upon between the laborer and Bhatta owner, regularly. No deductions are to be made from their wages; for the damage/losses to bricks



caused on account of rain and it shall be borne by the Bhatta owners.

- 6) Jamadar/Jamadar system. The existing Jamadar/Jamadarni system is to cease forthwith. All the laborers shall have direct dealings with their respective owners. No payments on behalf of the laborers shall be made to them nor recoverable/adjustable.
- 7) The owners shall not directly or indirectly ask or pressurize any laborer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and or children might in proper cases be proceeded against.

## Implementation Mechanism

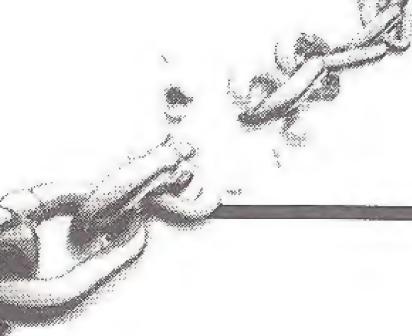
On the implementation side, the court ordered: 'For the time being, it has been decided to make amongst others, the following arrangements for the implementation of the interim agreement/decision reached with the consent of all concerned:-

- 1) The Advocate General of the Province shall be in charge of all criminal matters directly or indirectly concerned with the practice of Bonded Labour whether or not formally instituted or registered. He shall also be indirectly in charge of the processes of the recovery of



past genuine Peshgis in so far as it would be practicable, till a new law is made about the same. He shall also be directly involved in the determination of the amount of past peshgis.

- 2) The provincial Bar Council, the High Court Bar Association, district Bar Associations, and other local Bar Associations, shall form committees to deal with the Bonded labour. The Vice Chairman of the provincial Bar Council shall be the head of this system of committees. The president of the Lahore High Court Bar Association will coordinate his proceedings with the Vice-Chairman of the Bar Council;
- 3) A separate press committee shall be formed with Mr. Majid Nizami, Chief Editor of Nawa-e-Waqat subject to his consent, as the Head of this Committee;
- 4) A committee for women and children shall be formed with Begum Dr. Justice Javed Iqbal as its chairperson, subject to her consent;
- 5) Honorable Chief Justice of the Lahore High Court will be approached by the learned Advocate General to apprise him of the bonded labour situation in Punjab and about the present case and proceedings. The Advocate General shall also make a request for nomination of an Honorable Judge of the High Court from amongst the members of the Administration Committee, to deal with the cases, which the Advocate General would certify as concerned directly or indirectly with the subject of bonded labour.



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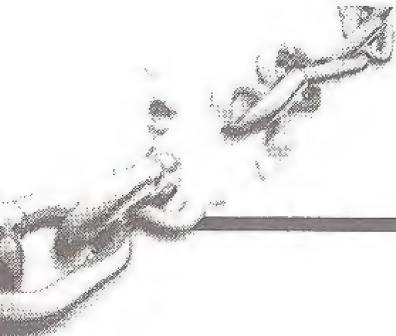
## d). Bonded Labour System (Abolition) Act 1992

1. After the Darshan Maseh case, the Bonded Labour System (Abolition) Act 1992 was promulgated on 11th March 1992. The preamble of the act provides for abolishing the bonded labour system as Article 12(2) of the Constitution prohibits all forms of forced labour and the Constitution further dictates to bring the economic and physical exploitation of the labour class in the country to an immediate end.
2. The law extends to the whole of Pakistan and came into force at once.
3. Section 2 of the Act defines various terms used in the Act including advance, bonded debt, bonded labour, bonded labourers, bonded labour system, family and nominal wage.
4. The bonded labour system is defined as:  
*" s 2 (e) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that*
  - (i) in consideration of an advance (peshgi) obtained by him or by any of the members of his family [whether or not such advance (peshgi) is evidenced by any document] and in consideration of the interest, if any, due on such advance (peshgi),



or

- (ii) in pursuance of any customary or social obligation, or
- (iii) for any economic consideration received by him or by any of the members of his family; he would
  - (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period either without wages or for nominal wages, or
  - (2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or
  - (3) forfeit the right to move freely from place to place, or
  - (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him; and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that, in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.



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5. Similarly, the family is defined as:

'2(f) "family" means:

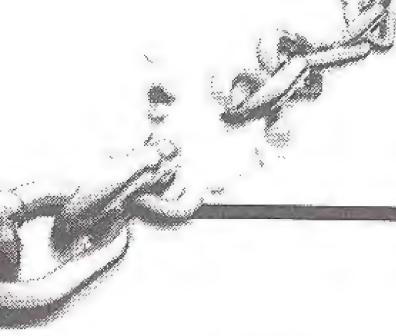
- (i) in the case of a male bonded labourer, the wife or wives, and in the case of a female bonded labourer, the husband of the bonded labourer, and
- (ii) the parents, children, minor brother, and unmarried, divorced or widowed sisters of the bonded labourer wholly dependent on him;

- 6. The law is an overriding law as it over-rides any other provision contained in any other law for the time being in force (Section 3).
- 7. The bonded labour shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.
- 8. Any custom or trade or practice or contract etc. by virtue of which a person or any member of his family is required to do bonded labour is declared void and inoperative.
- 9. Every obligation of the bonded labour to repay the bonded debt is extinguished;
- 10. A suit or proceedings in any form for the recovery of bonded debt is not allowed;
- 11. if the decree has been passed for the recovery of the bonded labour it is inoperative;
- 12. if the property has been forcibly taken away by the



creditors for such recovery, such property shall also be restored;

13. if any sale , transfer or assignment of any property of bonded labour is made for the recovery of the debt, it is also null and void;
14. if any mortgage, charge, lien or any other encumbrance is made on the property of the bonded labour in connection with bonded labour or debt, all those are discharged from such encumbrance.
15. Creditors are directed not to accept any payment against any bonded debt and if any one contravenes this provision, he shall be imprisoned for a period which may extend to three years or with fine which shall not be less than fifty thousand rupees or with both.
16. If any body compels any person to render any bonded labour, he shall be punishable with imprisonment of a term which is not less than two years and not more than five years and a fine which shall not be less than fifty thousand rupees or both. (Section 11).
17. These offences are tried by the magistrate of first class and can be tried summarily. The offices are cognizable and bail able.
18. The provincial government may confer powers and impose duties upon the district magistrates to ensure the implementation of this Act and to promote the welfare of the freed bonded labour by securing and protecting the economic interests of such bonded



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## labour (Section 10)

19. Vigilance committees are made at every district:
  - (a) to advise the District Administration on matters relating to the effective implementation of the law and to ensure its implementation in a proper manner;
  - (b) to help in the rehabilitation of the freed bonded labourer;
  - (c) To keep an eye on the working of the law; and
  - (d) To provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law. **(Annex I)**

### e). Bonded Labour System (Abolition) Rules, 1995

1. For the smooth operation and implementation of this Act of 1992, the federal government is empowered to frame rules under section 21 of the Act 1992.
2. The federal government made the rules that are called the Bonded Labour System (abolition) Rules, 1995. The rules came into force at once.
3. Rule 3 empowers the provincial governments to designate an authority or authorities to deal with the restoration of the property of the bonded labour. Any member of the bonded labour family can apply to the



authority for the restoration of their property.

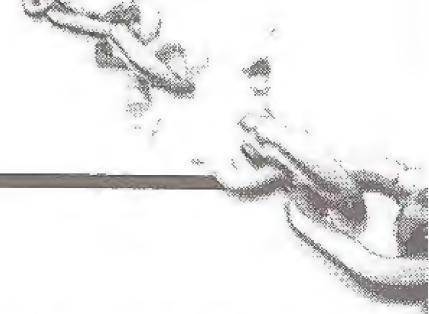
4. Rule 3 provides that the provincial government is to establish one or more authorities and it details its composition. It empowers the authority to handle the cases of restoration of possession of any property of the bonded labour and provides a mechanism from filing to hearing and final adjudication of the application by the bonded labourer and specifies a time period of 30 days for decision. The limitation for filling the application has been given as seven years from the day of accrual of cause of action.
5. Rule 4 provides details about the Powers to be exercised and duties to be performed by the District Magistrate for implementing the provisions under the Act 1992.
6. Rule 5 deals with the conferment of powers by the district magistrate upon the other officers.
  - a) Rule 6 talks of composition and meetings of the vigilance committees.
  - b) Similarly rule 7 provides a detailed list of functions which these vigilance committees shall perform.
  - c) Rule 8 provides for the term and tenure of the non official members of these vigilance committees.
  - d) Rule 9 establishes a fund for the rehabilitation and welfare of the freed bonded labourer. It details about the collection/contribution of the fund and its

onward utilization.

- e) Rule 10 provides that the non official members shall be entitled to traveling allowance and daily allowance as determined by the provincial government.

## f) Federal Shariat Court Judgment

- 1. The Brick kiln owners filed petitions in the Federal Shariat Court (FSC) of Pakistan to declare the Bonded Labour System (Abolition) Act 1992 and the Rules made there under in 1995 as un-Islamic. (Shariat Petitions No.8/C of 1993 and others)
- 2. The Federal Shariat Court is a constitutional court constituted under Article 203(c) of the Constitution. The court under Article 203(d) has a special jurisdiction either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet.
- 3. If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision-
  - (a) the reasons for its holding that opinion; and
  - (b) the extent to which such law or provision is so repugnant; and

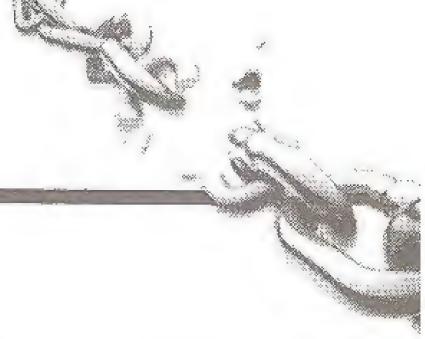


(c) specify the day on which the decision shall take effect.

4. If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam then the President or the Governor, as the case may be, shall take steps to amend the law so as to bring such laws or provisions into conformity with the Injunctions of Islam; and such laws or provisions shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.
5. The matter was argued at length by various parities and the court vide its judgment dated 10-10-2005 declared that the Bonded Labour System (Abolition) Act 1992 and the rules made there under are wholly in accordance with the constitution of Pakistan hence teachings of Islam.
6. Three member bench headed by Chief Justice, Mr. Justice Ejaz Yousuf, the honorable court after declaring the law Islamic further observed as under:
  - a) that the bonded labour abolition regime is Islamic and in tune with Constitution;
  - b) That the law is not being implemented; hence, the government should take it seriously to implement the law; that the objective for which the act was passed could not be achieved so far as almost every day reports come out in national press about the unlawful dentition of laborers working in brick

kilns;

- c) That under section 9 and 10 of the Act, district magistrates/district nazims have been made responsible to ensure the provisions of the act are properly enforced and the welfare of the freed bonded labour is taken care of. Similarly, section 15 provides for the constitution of vigilant committees. It is unfortunate that so far no specified authority, (vide Section 9) in any district in Pakistan has taken care to exercise its powers so as to alleviate the misery and torture being inflicted upon the brick kiln laborers by many owners, in their respective jurisdictions. Likewise, no vigilance committees have been formed anywhere in the country. This state of affairs is alarming, to say the least. It has immensely distressed us.
- d) It is for the government functionaries to ensure the due and purposeful enforcement of the Act in its letter and spirit, so that the menace of forced labour rampant in brick kilns, and other similar establishments all over the country, is checked and comprehensively exterminated.
- e) that a brick kiln squarely falls within the purview of "factory' vide section 2(j) of the Factories Act 1934. It is high time that all the brick kilns are duly registered as factories to enable the labour inspector to pay regular visits to them and take suitable action/measures, in accordance with the

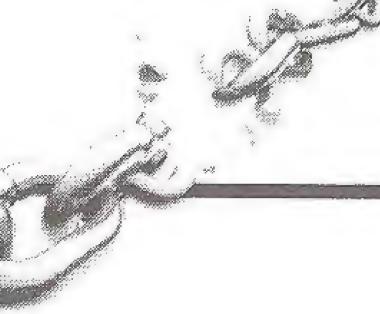


Labour Laws to achieve the objective of banishment of practice of forced labour from this industry.

- f) Bonded Labourers Research Forum, Ministry of Labour Manpower and Overseas Pakistanis, ILO and Pakistan Institute of Labour and Research did a commendable job in preparing studies but no action, so far, seems to have been taken.
- g) We direct that a copy of this judgment be forwarded to (i) Ministry of Law, Justice and Parliamentary Affairs; (ii) Ministry of Labour, Manpower and Overseas Pakistanis, Government of Pakistan as well as to all the provincial governments in the country.

### g). Courts behavior

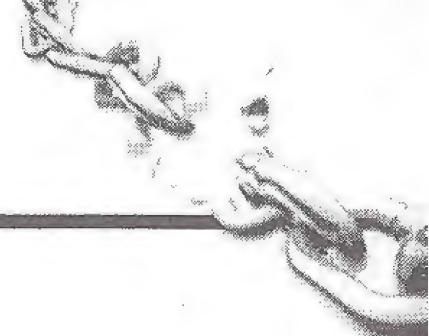
- 1) As per a study conducted by the International Labour Organization, in Sessions Courts in Punjab from 2000 to 2005, 143 cases in the nature of habeas corpus for the release of bonded labour were filed. Out of 143, in 123 cases which are 87% of the total, the courts set the detenues at liberty and the rest were dismissed on various grounds. But the courts did not pass any direction to the police, district administration or the ilaqqa magistrate etc to prosecute the delinquents.
- 2) Similarly, in the Lahore High Court in 2003, a total of 137 cases were filed; in 2004 141 cases were filed whereas in 2005 only 80 cases were filed. In 66%



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cases the court set the detenues at liberty but no directions were passed for prosecution.

- 3) In the province of Sindh, during this period from 3-10-2004 to 5-8-2005, in Sindh High Court Hyderabad Bench, 5 cases were reported wherein allegedly 133 persons were detained and all those were agriculture persons and they were only set at liberty.
- 4) In NWFP (now Khyber Pakhtoon Khawa) and the province of Balochistan, a similar pattern is followed.
- 5) The Sessions courts and High Courts have the powers to direct the relevant authorities of the criminal justice administration system to initiate the criminal proceedings against the persons who allegedly extract forced or bonded labour from the people but the courts have not so far passed any such instructions in any case so reported.



## 9. General Remedies Available to the Bonded Labourer

### 1). Nature of Problems

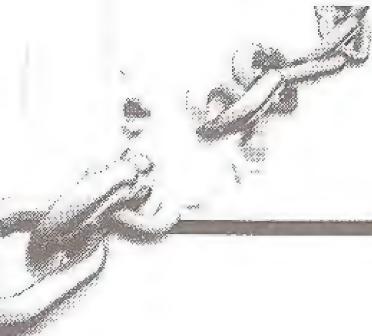
The bonded labourer or his family are very vulnerable and face many problems. If we try to indicate most frequently problems faced by the bonded labour, we can say:

- a) he or she is forced to do bonded labour or some other offence has been done to him or her;
- b) he is illegally detained or confined;
- c) his property is taken away;
- d) he needs legal assistance;
- e) He is freed but needs rehabilitation.

### 2). Authorities to be approached

There are many remedies available to them but they do not know about these remedies or their processes. For example, for such or any other problem, the needy bonded laborer can approach:

- a. District Authorities
- b. Vigilance Committee
- c. Restoration Authority
- d. CSOs, NGOs etc



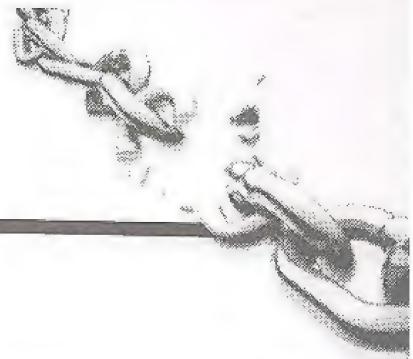
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- e. Free legal aid services
- f. Police
- g. Magistrate
- h. Sessions Court
- i. High Court
- j. Supreme Court

### 3). Seeking Help of the District Authorities

- 1. The bonded labourer or his family may face many problems. There are many remedies also available to them for each problem e.g. bonded labourer can have the following problems:
  - a) he is forced to do bonded labour or some other offence has been done to him or her;
  - b) he is illegally detained or confined
  - c) his property is taken away
  - d) he needs legal assistance
  - e) He is freed but needs rehabilitation.
- 2. In all such situations, he can approach the District Nazim, District Coordination Officer, District Magistrate etc (or their equivalent) for help and it is their duty to help him.
- 3. Such officers shall try to promote the welfare of the

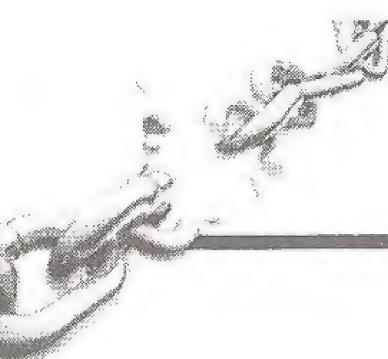




freed bonded labourer by securing and protecting the economic interest of such bonded labourer.

4. It is the duty of the District Coordination Officer, District Nazim or District Magistrate (or their equivalent) or any other officer designated by them to enquire whether any bonded labour system or any other form of forced labour is being enforced and if such labour or system is found, then to take necessary action.
- 4). Seeking Help of the Vigilance committees

1. The Provincial Government is obliged to set up the vigilance Committees at District level. If a bonded labourer has any problem, he or she can approach the local Vigilance Committee.
2. It is the duty of the vigilance committee to:
  - a) To help district administration for effective implementation of the law about bonded labour;
  - b) Help in the rehabilitation of the freed Bonded labour;
  - c) To provide assistance to the bonded laborer;
  - d) Get restore property, if any, of the bonded labour.
3. The bonded labourer or his family may face many problems. There are many remedies also available to them for each problem. In all such situations, he can



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approach the District vigilance committee for help and it is a legal duty of the Committee to help him.

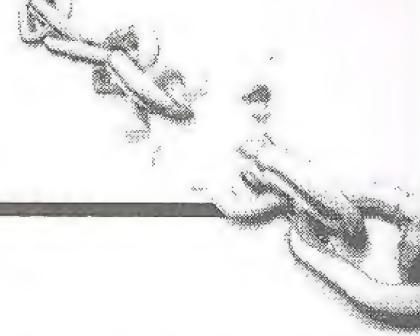
## 5. Seeking Help of the Authority for Restoration of the property

- 1) The provincial governments are under legal duty to appoint or designate an authority in each district to help the bonded labour for the restoration of its property if it has been snatched, sold, transferred etc by any one.
- 2) A bonded labourer, if have such problem, can apply to such authority or vigilance committee for the restoration of the possession of the property if it has been taken by creditor, sold , transferred etc;
- 3) The authority has to decide the matter within 30 days of the filing of the application.

## 6). Seeking Legal Assistance

If any bonded labourer needs legal guidance, he or she can approach:

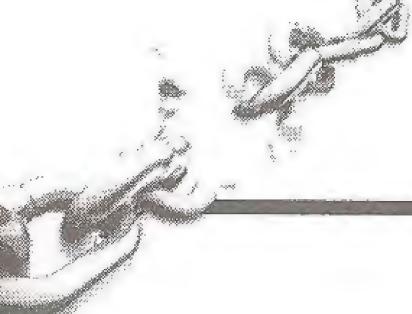
- a. Legal Aid services Units/centres set up by the provincial government.
- b. District Vigilance Committee.
- c. Free Legal Aid services provided by the District government.



- d. Free Legal Aid services provided by the Bar Associations.
- e. Free Legal Aid services provided by the local or national Civil Society Organizations or NGOs.

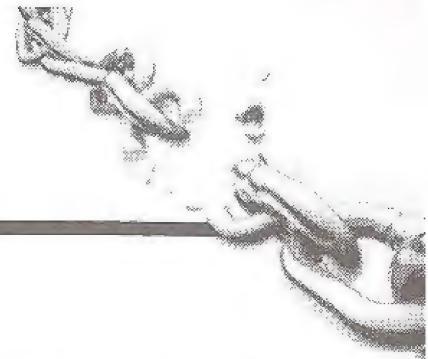
## 7). Seeking Help of a CSO, NGO

- 1. If a bonded labourer or his family is facing any problem, he or she can approach a local CSO or NGO working for the abolition of bonded labour.
- 2. The CSO or NGO can help to solve the problem by:
  - a. Arranging access to relevant legal services or forums;
  - b. Approaching District Vigilance Committee;
  - c. Approaching Police;
  - d. Approaching the Magistrate, the Sessions Court or High Court;
  - e. Providing free legal assistance;
  - f. Providing shelter;
  - g. Helping rehabilitation;
  - h. Highlighting the matter in media to attract attention of the relevant authorities etc.



## 10. Remedies Available in Criminal Matters

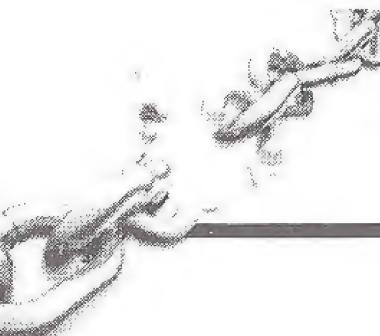
1. The Bonded Labour System (Abolition) Act 1992 and Pakistan Penal Code 1860 create some special offences with respect to the bonded labour system. These offences are in addition to the general offences relevant to the bonded labour system like wrongful confinement, detention, kidnap etc that are already in many laws including Pakistan Penal Code 1860. The special offence as mentioned above are:
  - a. If someone compels any person to render any bonded labour, he shall be punishable with imprisonment for a term which shall not be less than two years and not more than five years, or with fine which shall not be less than fifty thousand rupees, or with both. (Section 11, Act 1992)
  - b. If someone enforces any custom, tradition, practice, contract agreement etc by virtue of which any person or any member of his family is required to render any service under the bonded labour system, he shall be punishable with imprisonment for a term which shall not be less than two years and not more than five years or with fine which shall not be less than fifty thousand rupees , or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees for each day for which bonded labour



was extracted from him. (Section 12 Act 1992)

- c. If someone was required to restore any property to the possession of any bonded labour, but omits or fails to do so, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of ten rupees for each day during which possession of the property was not restored to him. (Section 13, Act 1992)
- d. If someone abets any offence punishable as above, shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted. (Section 14, Act 1992)

2. If someone unlawfully compels any person to labour against the will of that person, he shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. (Section 374, PPC)
3. Similarly detaining or illegally confining a person is also an offence.
4. In the light of the above it is an offence if:
  - a. someone is compelled to render any bonded labour;



- b. someone enforces any custom, tradition, practice, contract agreement etc by virtue of which any person or any member of his family is required to render any service under the bonded labour system;
  - c. someone was required to restore any property to the possession of any bonded labour, but omits or fails to do so;
  - d. someone abets any offence punishable as above; or
  - e. someone unlawfully compels any person to labour against the will of that labourer; or
  - f. Someone is detained or illegally confined.
3. If any of the above offences are committed against a bonded labour, or any member of his or her family, the following legal remedies available to him or her. He or she can use any of remedies available (details below):
  - A. Registration of FIR with Police
  - B. Filing a direct complaint before a Magistrate
  - C. Search Warrants by the Magistrate
  - D. Habeas Corpus Petition in Sessions Court
  - E. Habeas Corpus Petition in High Court
  - F. Original Jurisdiction of the Supreme Court (in

exceptional cases)

#### **A. Directing the Registration of FIR by the Police**

1. Any bonded labour or any other person, who thinks that any of the relevant provisions of the Bonded Labour System (Abolition) Act 1992 or any relevant provision of Pakistan Penal Code 1860 has been breached, can get a case registered in the local police station.
2. Any other person, who is even not related to the bonded labour or a detained person or is a member of a NGO, CSO etc, but has information of the commission of the offence, can give this information to the police.
3. The officer in charge of the police station is under a statutory duty under section 154 of the Code of Criminal Procedure 1898 to enter, so given information regarding the commission of the offence, in a prescribed Register.
4. If the police do not register the FIR, it entails penal action against the police official under the Police Rules 1861 and similarly under other Police related laws, so complaint can be made to senior police officers.
5. If the police do not register the FIR, any aggrieved person can approach the Illaqa magistrate who can issue direction to the police for registration of FIR under section 156(3) of the Code of Criminal Procedure 1898.

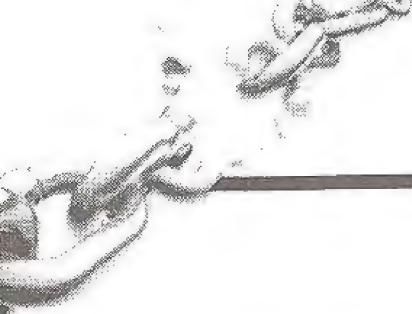
6. If the police do not register the FIR, then any aggrieved person can approach the Sessions Court who is ex-officio Justice of Peace for exercise of powers under section 22-A (6) Code of Criminal Procedure 1898 and he can order registration of a FIR.

## **B. Direct Complaint before a Magistrate**

- 1) A bonded labour or his family member or any other person can directly file a complaint before a magistrate if any of the relevant provisions of the Bonded Labour System (Abolition) Act 1992 or any relevant provision of Pakistan Penal Code 1860 has been breached.
- 2) A member of an association, society, NGO, CSO etc, who thinks that any of the relevant provisions of the Bonded Labour System (Abolition) Act 1992 or any relevant provision of Pakistan Penal Code 1860 have been breached, can directly file a complaint before a magistrate who can take cognizance and start trial or can direct for an enquiry.
- 3) A Magistrate of the First Class can directly take cognizance of an offence upon receiving the complaint of the facts which constitute such offence.
- 4) The direct private complaint can be filed before a Magistrate having territorial jurisdiction in the matter. In complaints under Bonded Labour (Abolition) Act 1992, the Magistrate shall be especially empowered by the provincial Government.
- 5) A complaint can be lodged directly to the Magistrate if

the police refuse to register the FIR.

- 6) A complaint can be lodged directly to the Magistrate if a party does not want to register the case with the police.
- 7) A complaint can be lodged directly to the Magistrate if the police lodges its own FIR without consulting the complainant.
- 8) A complaint can also be filed when the FIR is cancelled or quashed.
- 9) The Magistrate can also take cognizance upon a report in writing of such facts made by any police officer, upon information from any other person or upon his own knowledge or suspicion.
- 10) The Magistrate taking cognizance of the offence on complaint shall at once examine the complainant on oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and by the magistrate.
- 11) When a direct complaint is lodged before a Magistrate, the Magistrate is empowered to direct the police to investigate the case and the police have all the powers to investigate the case.
- 12) The court before whom the complaint is made or to whom it has been transferred may dismiss the complaint if after the statement on oath of the complainant or after the results of the investigation or



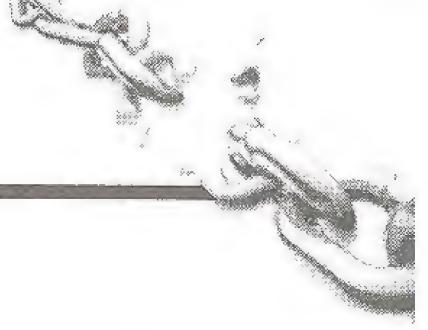
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enquiry, it thinks that there is no sufficient ground for proceeding.

- 13) If the complaint is filed in a case where FIR is also registered and challan is submitted in the court, the complaint case should be taken first.

### C. **Search Warrants for Persons Wrongfully Confined**

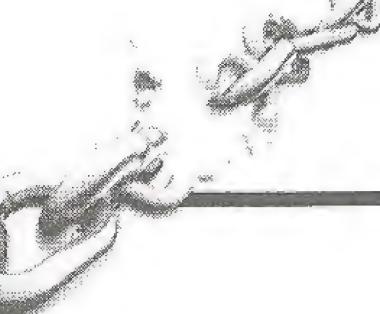
1. A bonded labour or his family member who thinks that some bonded labourer or any member of his family is illegally confined by someone, can apply to a Magistrate of First Class to issue a search warrant.
2. The Magistrate if has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, may issue a search warrant.
3. The search warrant can be directed to any person, may be a police office or a private person and the person to whom search warrant is directed may search for the person so confined, and the person, if found, shall be immediately taken before the Magistrate , who shall make such order as in the circumstances of the case seems proper.
4. A member of an association, society, NGO, CSO etc, who thinks that any of the bonded labourer or any of his family members is confined, may apply for the search warrant.



5. Police is under legal obligation to execute the search warrant and search the place to find any detained bonded labour. Even otherwise, police can search a place without a search warrant if it has reasonable evidence that someone is wrongly detained in a place.

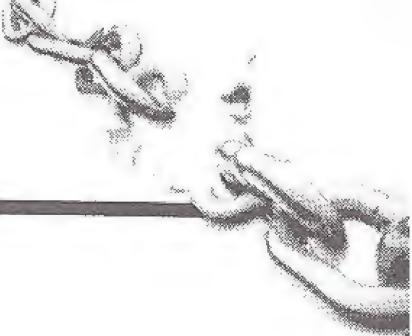
#### **D. Habeas Corpus Petition in Sessions Court**

1. If a bonded labourer or any other labourer or its family member is detained, he or she can file a writ of habeas corpus in the local Sessions Court.
2. Habeas corpus is a legal action, or writ, through which a person can seek relief from its unlawful detention or that of another person.
3. A writ of habeas corpus ad subjiciendum, is also known as "The Great Writ."
4. It protects individuals from being harmed by the employers or police or any person or agency.
5. The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.
6. If a bonded laborer thinks that some members of his family have been illegally detained by some offenders or the members of his family or any other person thinks that a laborer has been illegally detained, he can directly file an application for direction of the nature of Habeas corpus in the court of Sessions Judge under Section 491 of the Cr.P.C.



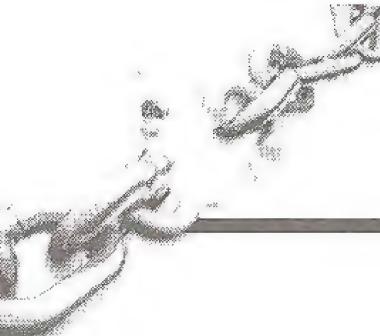
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7. It means that a person within the limits of its criminal appellate jurisdiction be brought up before the court to be dealt with according to law and that a person illegally or improperly detained in public or private custody within such limits be set at liberty.
8. The Sessions court can direct police to produce the alleged detained persons before the court for appropriate orders.



## 11. Annexures

- A. UNDHR
- B. ICCPR
- C. ICESCR
- D. CRC
- E. C29
- F. C105
- G. Article 11
- H. PPC sections
- I. 1992 Act



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## Annexure-A

### **Universal Declaration of Human Rights**

#### **Article 3**

Everyone has the right to life, liberty and security of person.

#### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



## Annexure-B

### International Covenant on Civil and Political Rights

#### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;  
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent

court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

# **Annexure-C**

## **International Covenant on Economic, Social and Cultural Rights**

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

# Annexure-D

## **Convention on the Rights of the Child**

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **Article 16**

1. No child shall be subjected to arbitrary or unlawful



interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

## Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.



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## Annexure-E

The General Conference of the International Labour Organisation,

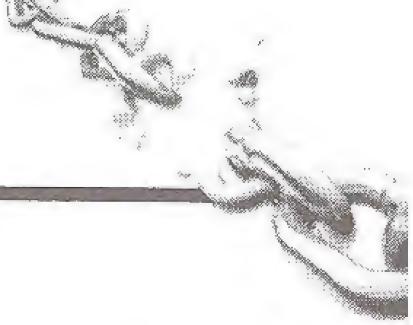
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

### Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an



exceptional measure, subject to the conditions and guarantees hereinafter provided.

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

## Article 2

1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include--
  - (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
  - (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
  - (c) any work or service exacted from any person as a

consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

### **Article 3**

For the purposes of this Convention the term competent authority shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

## **Article 4**

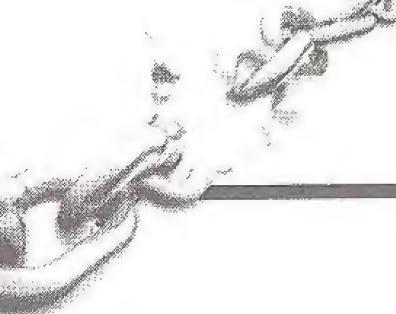
1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.
2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

## **Article 5**

1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.
2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.

## **Article 6**

Officials of the administration, even when they have the duty of



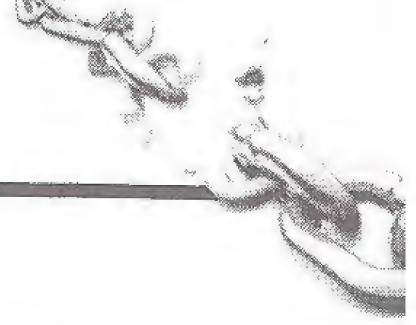
encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

## Article 7

1. Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.
2. Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.
3. Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.

## Article 8

1. The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.
2. Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the

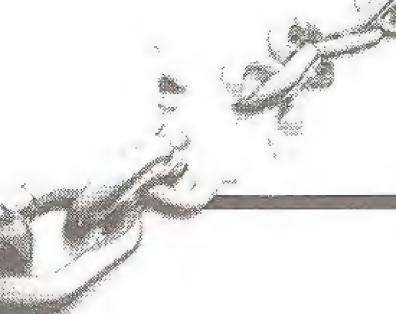


regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of Government stores.

## Article 9

Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself:

- (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;
- (b) that the work or service is of present or imminent necessity;
- (c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and
- (d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.

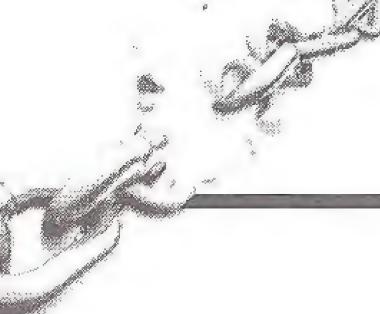


## Article 10

1. Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.
2. Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself:
  - (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;
  - (b) that the work or the service is of present or imminent necessity;
  - (c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;
  - (d) that the work or service will not entail the removal of the workers from their place of habitual residence;
  - (e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

## Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:
  - (a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;
  - (b) exemption of school teachers and pupils and officials of the administration in general;
  - (c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;
  - (d) respect for conjugal and family ties.
2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its



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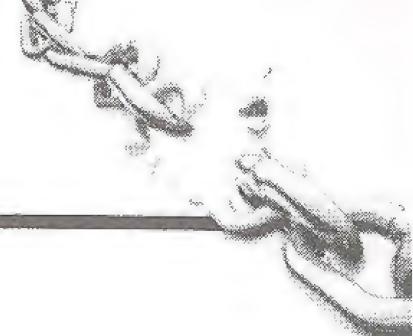
social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

## Article 12

1. The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.
2. Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.

## Article 13

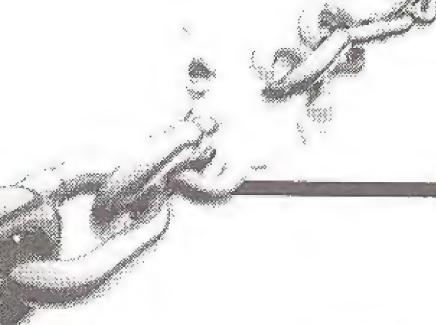
1. The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.
2. A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as far as possible



with the day fixed by tradition or custom in the territories or regions concerned.

## Article 14

1. With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.
2. In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.
3. The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.
4. For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.
5. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit



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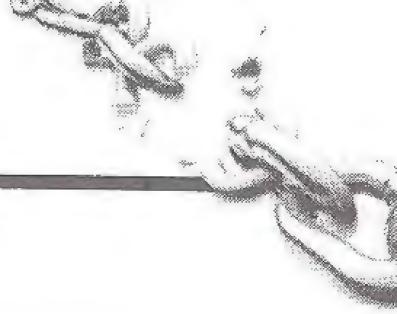
condition to carry on his work under the special conditions of any employment, or for the supply of tools.

## Article 15

1. Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.
2. In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.

## Article 16

1. Except in cases of special necessity, persons from whom forced or compulsory labour is exacted shall not be transferred to districts where the food and climate differ so considerably from those to which they have



been accustomed as to endanger their health.

2. In no case shall the transfer of such workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.
3. When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.
4. In cases where such workers are required to perform regular work to which they are not accustomed, measures shall be taken to ensure their habituation to it, especially as regards progressive training, the hours of work and the provision of rest intervals, and any increase or amelioration of diet which may be necessary.

## Article 17

Before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself:

- (1) that all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care, and, in particular, (a) that the workers are medically examined before commencing the work and at fixed intervals during the period of service, (b) that

there is an adequate medical staff, provided with the dispensaries, infirmaries, hospitals and equipment necessary to meet all requirements, and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, and cooking utensils, and, where necessary, of housing and clothing, are satisfactory;

- (2) that definite arrangements are made to ensure the subsistence of the families of the workers, in particular by facilitating the remittance, by a safe method, of part of the wages to the family, at the request or with the consent of the workers;
- (3) that the journeys of the workers to and from the workplaces are made at the expense and under the responsibility of the administration, which shall facilitate such journeys by making the fullest use of all available means of transport;
- (4) that, in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;
- (5) that any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.

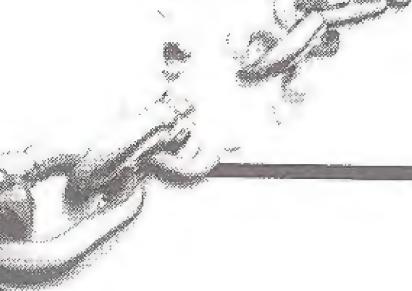
## Article 18

1. Forced or compulsory labour for the transport of



persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, (a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of Government stores, or, in cases of very urgent necessity, the transport of persons other than officials, (b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease, (c) the maximum load which these workers may carry, (d) the maximum distance from their homes to which they may be taken, (e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes, and (f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.

2. In fixing the maxima referred to under (c), (d) and (e) in the foregoing paragraph, the competent authority shall have regard to all relevant factors, including the physical development of the population from which the workers are recruited, the nature of the country through which they must travel and the climatic conditions.



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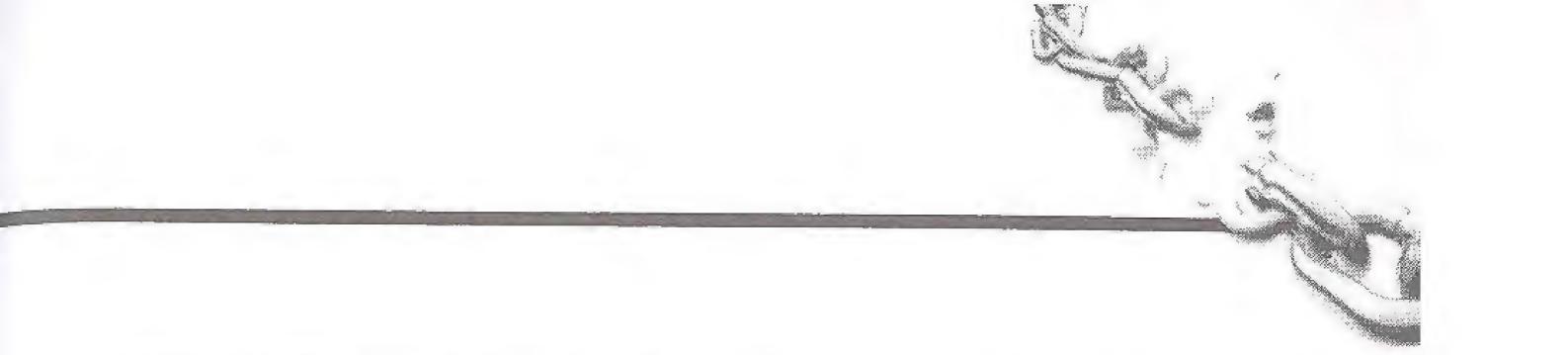
3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates.

## **Article 19**

1. The competent authority shall only authorise recourse to compulsory cultivation as a method of precaution against famine or a deficiency of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.
2. Nothing in this Article shall be construed as abrogating the obligation on members of a community, where production is organised on a communal basis by virtue of law or custom and where the produce or any profit accruing from the sale thereof remain the property of the community, to perform the work demanded by the community by virtue of law or custom.

## **Article 20**

Collective punishment laws under which a community may be punished for crimes committed by any of its members shall



not contain provisions for forced or compulsory labour by the community as one of the methods of punishment.

## **Article 21**

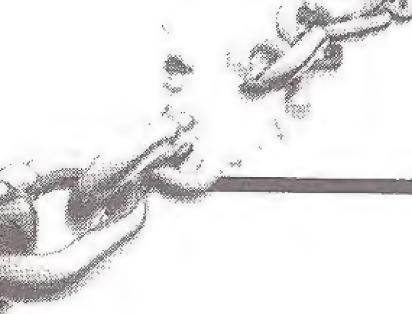
Forced or compulsory labour shall not be used for work underground in mines.

## **Article 22**

The annual reports that Members which ratify this Convention agree to make to the International Labour Office, pursuant to the provisions of Article 22 of the Constitution of the International Labour Organisation, on the measures they have taken to give effect to the provisions of this Convention, shall contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.

## **Article 23**

1. To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.
2. These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and



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ensuring that such complaints will be examined and taken into consideration.

## **Article 24**

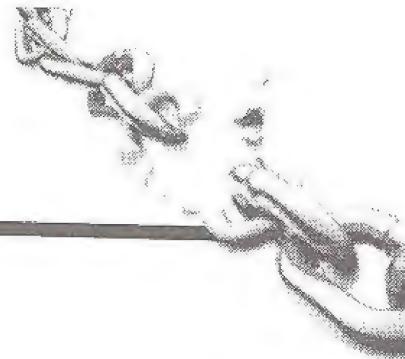
Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

## **Article 25**

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

## **Article 26**

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the provisions of article 35



of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating:

- (1) the territories to which it intends to apply the provisions of this Convention without modification;
- (2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;
- (3) the territories in respect of which it reserves its decision.

2. The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

## **Article 27**

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

## **Article 28**

1. This Convention shall be binding only upon those Members whose ratifications have been registered

with the International Labour Office.

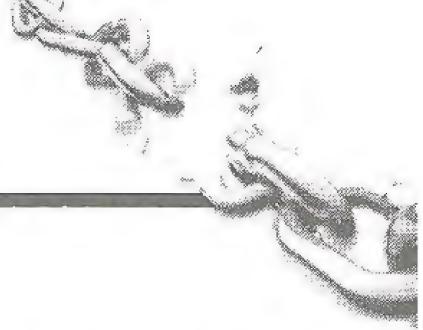
2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

## **Article 29**

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

## **Article 30**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.



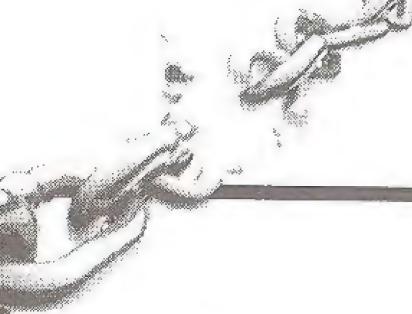
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

## **Article 31**

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

## **Article 32**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall ipso jure involve denunciation of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.
2. As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

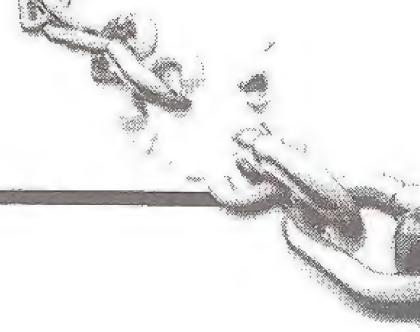


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3. Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

## **Article 33**

The French and English texts of this Convention shall both be authentic.



## Annexure-F

### C105 Abolition of Forced Labour Convention, 1957

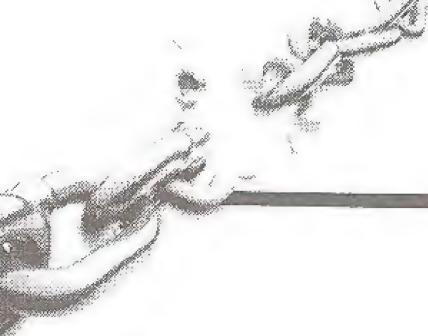
#### Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour--

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

#### Article 2

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

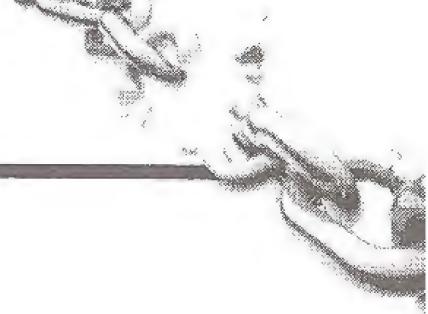


## Annexure-G

### Constitution of Pakistan

#### 11. Slavery, forced labour, etc. prohibited.

- (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
- (2) All forms of forced labour and traffic in human beings are prohibited.
- (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.
- (4) Nothing in this Article shall be deemed to affect compulsory service:-
  - (a) By any person undergoing punishment for an offence against any law; or
  - (b) Required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.



## Annexure-H

### Pakistan Penal Code 1860

#### 374. Unlawful compulsory labour:

(1) Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to [five years] or with fine, or with both.

# **Annexure-I**

## **Bonded Labour System (Abolition) Act, 1992**

### **An Act to provide for abolition of bonded labour system**

Whereas clause (2) of Article 11 of the Constitution of the Islamic Republic of Pakistan prohibits all forms of forced labour.

And whereas it is necessary to provide for abolition of bonded labour system with a view to preventing the economic and physical exploitation of the labour class in the country and for matters connected therewith or incidental thereto;

It is hereby enacted as follows: -

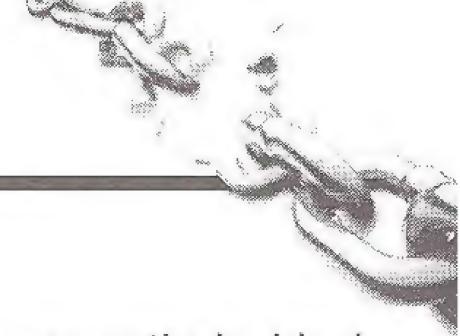
#### **1. Short title, extent and commencement:**

- (1) This Act may be called the Bonded Labour System (Abolition) Act, 1992.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

#### **2. Definitions:**

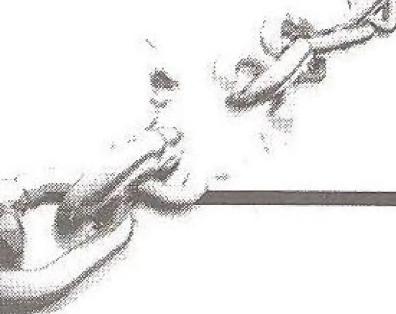
In this Act, unless there is anything repugnant in the subject or context:

- (a) "advance (peshgi)" means an advance (peshgi) whether



in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);

- (b) "bonded debt" means an advance (peshgi) obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;
- (c) "bonded labour" means any labour or service rendered under the bonded labour system;
- (d) "bonded labourer means a labour who incurs, or has, or is presumed to have, incurred, a bonded debt;
- (e) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that:
  - (I) in consideration of an advance (peshgi) obtained by him or by any of the members of his family [whether or not such advance (peshgi) is evidenced by any document] and in consideration of the interest, if any, due on such advance (peshgi), or
  - (ii) in pursuance of any customary or social obligation, or
  - (iii) for any economic consideration received by him or by any of the members of his family; he would

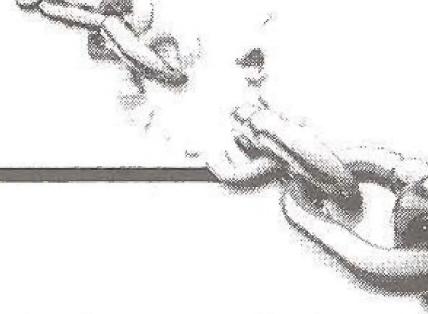


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- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period either without wages or for nominal wages or
- (2) forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely from place to place, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him; and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that, in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

(f) "family" means:

- (i) in the case of a male bonded labourer, the wife or wives, and in the case of a female bonded labourer, the husband of the bonded labourer, and
- (ii) the parents, children, minor brother, and



unmarried, divorced or widowed sisters of the bonded labourer wholly dependent on him;

#### **4. Abolition of bonded labour system:**

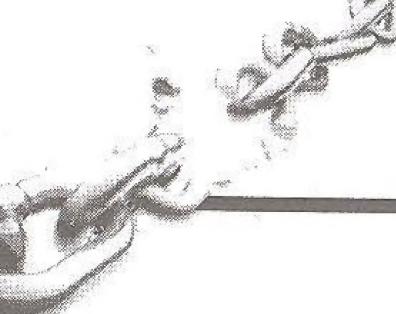
- (1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.
- (2) No person shall make any advance under, or in pursuance of, the bonded labour system or compel any person to render any bonded labour or other form of forced, labour.

#### **8. Creditor not to accept payment against extinguished debt:**

- (1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.
- (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which shall not be less than fifteen thousand rupees, or with both.

#### **11. Punishment for enforcement of bonded labour:**

Whoever, after the commencement of this Act compels any person to render any bonded labour shall be punishable with



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imprisonment for a term which shall not be less than two years nor more than five years, or with fine which shall not be less than fifty thousand rupees, or with both.

### **11. Punishment for extracting bonded labour under the bonded labour system:**

Whoever enforces, after the commencement of this Act any custom, tradition, practice, contract, agreement or other instrument, by virtue of which any person or any member of his family is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years or with fine which shall not be less than fifty thousands rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees for each day for which bonded labour was extracted from him.

### **13. Punishment for omission or failure to restore possession of property to bonded labourer:**

Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of ninety days from the commencement of this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of ten rupees for each day during which possession of the property was not restored to him.

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